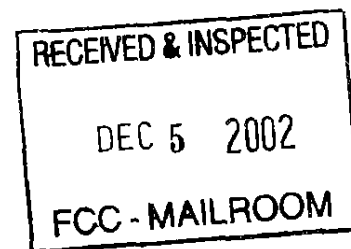


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the matter of	)	
	)	
Petition for Forbearance of Iowa	)	
Telecommunications Services, Inc. d/b/a/ Iowa	)	CC Docket No. 01-331
Telecom Pursuant to 47 U.S.C. § 160(c) from the	)	
Deadline for Price Cap Carriers to Elect Interstate	)	
Access Rates Based on the CALLS Order or a	)	
Forward Looking Cost Study	)	

## ORDER

Adopted: November 25, 2002

Released: November 26, 2002

By the Commission: Commissioner Martin approving in part, dissenting in part, and issuing a statement.

## 1 INTRODUCTION

1. In this Order, we address Iowa Telecommunications Services' (Iowa Telecom) Petition for Forbearance filed on November 26, 2001. Iowa Telecom requests that the Commission forbear from application of the rule imposing a deadline for choosing between rates adopted in the *CALLS Order*<sup>1</sup> and rates based on forward-looking economic cost (FLEC).<sup>2</sup> Alternatively, Iowa Telecom seeks forbearance from the \$0.0095 per minute average traffic sensitive (ATS) rate set in the *CALLS Order*, so that it may reset its ATS rate at forward-looking cost levels.<sup>3</sup> For the reasons discussed below, we deny Iowa Telecom's request that the Commission forbear from the CALLS election rule. We find, however, that it is in the public interest to grant Iowa Telecom's alternative request. Accordingly, we forbear from application of the \$0.0095 per minute ATS rate set forth in section 61.3(qq)(2) of the Commission's rules and allow Iowa Telecom to reset its ATS rate at forward-looking cost levels.

## II. BACKGROUND

2. To recover the cost of providing interstate access services, incumbent local exchange carriers (LECs) charge interexchange carriers (IXCs) and end users for access services in accordance with our Part 69 access charge rules. In the 1990s the Commission instituted an incentive-based system of regulation, known as price cap regulation, for the Regional Bell Operating Companies (BOCs) and GTE,

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<sup>1</sup> See *Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd 12962, 13029, para. 162 (2000) (*CALLS Order*), aff'd in part, rev'd in part, and remanded in part, *Texas Office of Public Utilities Counsel v. FCC*, 265 F.3d 313 (5<sup>th</sup> Cir. 2001) (*Texas Office of Public Utilities Counsel v. FCC*) (reversing and remanding two issues, unrelated to ATS rate levels, for Further analysis and explanation), cert. denied, *Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 122 S. Ct. 1537 (2002).

<sup>2</sup> See Petition for Forbearance of Iowa Telecommunications Services, Inc. d/b/a/ Iowa Telecom Pursuant to 47 U.S.C. § 160(c) filed on Nov. 26, 2001 (Petition).

<sup>3</sup> See Petition at iii and 2.

and permitted other LECs to be subject to price cap regulation voluntarily, subject to certain conditions.<sup>4</sup> Price cap regulation encourages companies to: (1) improve their efficiency by creating profit-making incentives to reduce costs; (2) invest efficiently in new plant and facilities; and (3) develop and deploy innovative service offerings.<sup>5</sup>

3. In May 2000, the Commission adopted the **CALLS Order**, an integrated interstate access charge reform and universal service proposal for price cap LECs.<sup>6</sup> The rate structure component of the **CALLS Order** is mandatory for all price cap LECs, for five years.<sup>7</sup> For rates, however, the Commission provided each price cap LEC with an opportunity to choose between two options. Each price cap LEC had to choose, at the holding company level, either to subscribe to the rate levels of the **CALLS Order** for its full five-year term, or to submit a cost study based on forward-looking economic costs. Carriers that elected the **CALLS plan**<sup>8</sup> subject their interstate ATS access rates to an X-factor of 6.5 percent until certain target levels are reached.<sup>9</sup> Any LEC that elected to submit a cost study based on FLEC would have its rates reinitialized to the appropriate level indicated by the FLEC study and would be made subject to a price cap plan and X-factor that the Commission would determine.<sup>10</sup> Each price cap LEC initially had sixty days from the release of the **CALLS Order**, from May 31, 2000 to July 31, 2000, to subscribe to the **CALLS plan** for its full five year term, or inform the Commission that it would reinitialize its rates based on a FLEC study.<sup>11</sup> The Commission extended the July 31, 2000 deadline to September 14, 2000, for all price cap LECs.<sup>12</sup> At the end of the deadline, all price cap LECs, including Iowa Telecom, elected the **CALLS plan's** rate-level components.

4. Iowa Telecom was formed in 1999 through the purchase of GTE's exchanges in the state of Iowa and started operations on July 1, 2000. Iowa Telecom assumed GTE's price cap status and became a price cap carrier through its purchase.<sup>13</sup> Shortly after Iowa Telecom started operations, the **CALLS Order** became effective. Iowa Telecom elected the **CALLS Order** rates, and, as a rural LEC, had its target rate for ATS charges set at 0.95 cents.<sup>14</sup> Iowa Telecom reached its target rate in July 2000 for one of its study areas and in July 2001 for the other.<sup>15</sup>

<sup>4</sup> *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990) (**LEC Price Cap Order**).

<sup>5</sup> *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, Second Further Notice of Rulemaking, 11 FCC Rcd 858, 863, para. 9 (1995) (**Price Cap Second FNPRM**).

<sup>6</sup> See **CALLS Order**, 15 FCC Rcd at 12964, para. 1.

<sup>7</sup> See *id.* at 12984, para. 58.

<sup>8</sup> The terms "CALLS plan" refers to the integrated access charge reform and universal service proposal put forth by the members of the Coalition for Affordable Local and Long Distance Service, as revised by the **CALLS Order**.

<sup>9</sup> See **CALLS Order**, 15 FCC Rcd at 13028, para. 161. We note that the court remanded the level of the X-factor for further analysis and explanation. See *Texas Office of Public Utilities Counsel v. FCC*.

<sup>10</sup> See **CALLS Order**, 15 FCC Rcd at 12984, para. 57.

<sup>11</sup> See *id.* at 12984-12985, paras. 51-62.

<sup>12</sup> See **Access Charges Reform**, CC Docket No. 96-262, Order, 15 FCC Rcd 23435, 23437-38, paras. 8-9 (CCB 2000) (**Citizens Order**).

<sup>13</sup> See 47 C.F.R. § 61.41(c).

<sup>14</sup> See **CALLS Order**, 15 FCC Rcd at 13029, para. 163.

<sup>15</sup> Once a low-density carrier (as defined in section 61.3(qq)(2)) reaches its ATS target rate, the 6.5 percent X-factor is applied to reduce carrier common line (CCL) charges. After the elimination of the CCL charges, the X-factor will be set to inflation. See **CALLS Order**, 15 FCC Rcd at 13022, para. 144. To date, Iowa Telecom has eliminated its

(continued...)

5. *Petition for Forbearance.* In its Petition, Iowa Telecom requests that the Commission forbear from application of the rule imposing a deadline for choosing between the CALLS plan rates and rates based on FLEC, thus relieving Iowa Telecom of its 2000 decision to elect the CALLS plan.<sup>16</sup> Alternatively, Iowa Telecom seeks forbearance from the \$0.0095 per minute ATS rate set by the CALLS plan, so that it may reset its ATS rate at forward-looking cost levels.” Iowa Telecom argues that it “lacked the capability to make a meaningful election” at the time it chose the CALLS plan because it began operations shortly before the election date, and could not assess the financial viability of the cost study option.<sup>18</sup> Therefore, it relied on the general understanding in the industry that access rates based on FLEC would be significantly lower than under the existing price cap regulation. Iowa Telecom believes now that its access rates would be significantly higher if it reset its rates based on FLEC.<sup>19</sup> AT&T, WorldCom, and Sprint oppose the grant of the petition.<sup>20</sup>

6. *Standard for Forbearance.* The goal of the Telecommunications Act of 1996 is to establish “a pro-competitive, de-regulatory national policy framework,” to make available to all Americans advanced telecommunications and information technologies and services “by opening all telecommunications markets to competition.”<sup>21</sup> An integral part of this framework is the requirement in section 10 of the 1996 Act that the Commission forbear from applying any provision of the Act, or any of the Commission’s regulations, if the Commission makes certain specified findings with respect to such provisions or regulations.” Specifically, the Commission is required to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that charges are just and reasonable, and are not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. Section 10 further provides that, in determining whether forbearance is in the public interest, the Commission “shall consider whether forbearance . . . will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”<sup>23</sup>

### III. DISCUSSION

(...continued from previous page)

CCL charges for only one of its study areas. The remaining CCL charges should be eliminated with the July 2003 annual access tariff filing.

<sup>16</sup> See Petition at I

<sup>17</sup> See *id*

<sup>18</sup> Petition at 6. See also Letter from Mimi Weyforth Dawson, Wiley Rein & Fielding LLP, to Michael K. Powell, Chairman, FCC, CC Docket No. 01-331 at 2 (Aug. 9, 2002) (Iowa Telecom August 9, 2002 *Ex Parte* Letter).

<sup>19</sup> See Petition at 30

<sup>20</sup> See Petition for Forbearance of Iowa Telecommunications Services, Inc. d/b/a/ Iowa Telecom Pursuant to 47 U.S.C. § 160(c), CC Docket No. 01-331, AT&T Opposition to Iowa Telecom Forbearance Petition (AT&T Opposition); Petition for Forbearance of Iowa Telecommunications Services, Inc. d/b/a/ Iowa Telecom Pursuant to 47 U.S.C. § 160(c), CC Docket No. 01-331, WorldCom Opposition (WorldCom Opposition); and Petition of Iowa Telecommunications Services for Forbearance from the Deadline for Price Cap Carriers to Elect Interstate Access Rates Based on the *Calls Order* or a Forward Looking Cost Study, CC Docket No. 01-331, Comments of Sprint Corporation (Sprint Comments).

<sup>21</sup> Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104<sup>th</sup> Cong., 2d Sess. 113 (1996).

<sup>22</sup> 47 U.S.C. § 160(a)

<sup>23</sup> 47 U.S.C. § 160(b)

7. In the discussion below, we address first Iowa Telecom's request to forbear from application of the rule imposing a deadline for choosing between the options for setting rates in the *CALLS Order*. Next we address Iowa Telecom's alternative request to forbear from the \$0.0095/minute ATS rate set in the *CALLS Order*,<sup>24</sup> so that it may reset its ATS rate at forward-looking cost levels.<sup>25</sup>

A. Forbearance from the CALLS Election Rule.

8. Iowa Telecom argues that it did not have a meaningful opportunity to make an informed choice when it made its CALLS election because it began operations shortly before the election date, and could not assess the financial viability of the cost study option.<sup>26</sup> Iowa Telecom also contends that we should forbear from the application of the CALLS election rule, because the election deadline is not necessary to ensure that its prices are just and reasonable. AT&T claims that Iowa Telecom knew what it was doing when it elected the CALLS plan and should be bound by its election.<sup>27</sup> WorldCom claims that Iowa Telecom's failure to take advantage of the opportunity it was given by the Commission does not justify forbearance.<sup>28</sup>

9. The *CALLS Order* required price cap carriers to choose between two different just and reasonable rate regimes by September 14, 2000, and made their election binding for the full five-year term of the CALLS plan.<sup>29</sup> The CALLS election rule sought to resolve in a timely manner any uncertainties associated with the implementation of the *CALLS Order*. The timely determination of whether there would be full participation in the CALLS plan was a significant part of the implementation, because several commitments from both AT&T and Sprint, the IXC participants in the CALLS plan, were premised on full participation by price cap LECs.<sup>30</sup> The Commission believed that the benefits of the CALLS plan could not be fully realized if all price cap LECs did not participate, and failure to implement the CALLS plan completely would have impeded advancement toward the 1996 Act's competition and universal service goals.<sup>31</sup> Moreover, by adopting the *CALLS Order*, the Commission sought to further relative certainty in the market place, regulatory simplicity, and administrative ease during the *CALLS Order*'s five-year term. The Commission found that the five-year term would also allow competition to develop sufficiently to bring interstate access prices toward forward-looking economic cost.<sup>32</sup>

10. The Commission considered two requests by price cap LECs for additional time to evaluate whether to subscribe to the CALLS plan for its full five-year term. Citizens Communications Company (Citizens) filed a motion requesting that the Commission extend the July 31, 2000 deadline for 60 days to

<sup>24</sup> See *CALLS Order*, 15 FCC Rcd 12962, 13029, para. 162; 47 C.F.R. § 61.3(qq)(2).

<sup>25</sup> See Petition at iii and 2.

<sup>26</sup> See Petition at 30.

<sup>27</sup> AT&T opposition at 3.

<sup>28</sup> WorldCom Opposition at 3. WorldCom also argues that a mere claim of a "bad business decision," such as electing the CALLS plan over FLEC option, is insufficient to justify forbearance. See *id.* at 3.

<sup>29</sup> See *CALLS Order*, 15 FCC Rcd at 12985-12986, paras. 61-62,

<sup>30</sup> See *CALLS Order*, 15 FCC Rcd at 12983, paras. 53-55. Specifically, AT&T and Sprint made the following commitments that are still in effect: to eliminate the minimum usage charge on at least one of their residential calling plans; to eliminate their presubscribed interexchange carrier charge (PICC) recovery mechanism for residential and single-line business lines no longer subject to the PICC; and to flow through to residential and business customers reductions in access charges associated with the CALLS plan over the life of the plan. *Id.* at 13 144-46, App. D.

<sup>31</sup> *CALLS Order*, 15 FCC Rcd at 12982, para. 50.

<sup>32</sup> *CALLS Order*, 15 FCC Rcd at 12985, para. 60.

complete its research, data development, and analysis to enable it to determine whether to accept or reject the CALLS plan. Citizens was still in the process of acquiring exchanges from Qwest and Verizon, and the majority of acquisitions had not closed at the time of the CALLS election date. As a result, Citizens stated that it needed 60 additional days “to gather the appropriate cost data and incorporate the cost characteristics of the acquired properties into Citizens’ existing cost structure, an indispensable step in making a decision” whether to accept or reject the CALLS plan.”

11. In the *Citizens Order*, the Commission partially granted Citizens’ request, and extended the election deadline for all price cap LECs for 45 days from July 31, 2000.<sup>34</sup> The Commission stated that this period of time was sufficient for all price cap LECs to complete their evaluations.<sup>35</sup> The Commission stated that the CALLS election period had to be relatively brief so as not to cause uncertainty or threaten the industry consensus reflected in the CALLS plan, or imperil the public interest benefits that the Commission sought to achieve in the *CALLS Order*.<sup>36</sup> Accordingly, the Commission found that a longer extension would undermine the Commission’s goal of generating a period of regulatory certainty in the interstate access marketplace.”

12. U S WEST petitioned the Commission for an open-ended partial stay of the *CALLS Order*.<sup>38</sup> In the *USWEST Order*, the Commission denied U S WEST’s petition and held that U S WEST had no entitlement to complete information about the alternative cost-based regime to which it would be subject if it were to opt out of the CALLS plan.” The Commission stated that it preferred the CALLS plan as a policy matter and had found it likely to be suitable for all price cap LECs.<sup>40</sup> The Commission found it reasonable to require carriers to make their election of regulatory options within a short period of time, and to make such elections binding for the five-year term of the CALLS plan.<sup>41</sup> By providing a deadline to choose between regulatory regimes, the Commission sought to allow itself an opportunity to conduct any required cost-study and price cap proceedings in a timely manner, and to minimize the scope of any subsequent true-up that might result from such proceedings.<sup>42</sup>

13. We find that the record is insufficient to justify a forbearance grant that would have the effect of undoing the public interest objectives of the CALLS election rule. In its Petition, Iowa Telecom does

<sup>33</sup> *Citizens Order*, 15 FCC Rcd at 23436, para. 4

<sup>34</sup> *Citizens Order*, 15 FCC Rcd at 23437-38, paras. 8-9.

<sup>35</sup> *Citizens Order*, 15 FCC Rcd at 23437, para. 7

<sup>36</sup> See *Citizens Order*, 15 FCC Rcd at 23436, para. 6

<sup>37</sup> See *Access Charge Reform*, CC Docket No. 96-262, Order, 15 FCC Rcd 13191, 13197, para. 14 (2000) (*U S WEST Order*).

<sup>38</sup> In its petition, U S WEST asked the Commission to stay the July 31 deadline for choosing between the two access charge rate level options until 60 days after the Commission issued a further order giving greater detail to the cost-study option. See *U S WEST Order*, 15 FCC Rcd at 13192, para. 2.

<sup>39</sup> See *U S WEST Order*, 15 FCC Rcd at 13192, para. 3. See also *Texas Office of Public Utilities Counsel v. FCC*, No. 00-60434 (and consolidated cases) (5th Cir. rel. July 21, 2000) (denying U S WEST’s request for stay).

<sup>40</sup> The Commission stated that it “clearly hoped that all price cap LECs would elect the CALLS option and not the cost-study option.” See *U S WEST Order*, 15 FCC Rcd at 13194, para. 7. See also *CALLS Order*, 15 FCC Rcd at 12981-12982, paras 48, 50.

<sup>41</sup> See *CALLS Order*, 15 FCC Rcd at 12985, para. 61; *U S WEST Order*, 15 FCC Rcd at 13192, 13193 and 13196, paras. 3, 6 and 12.

<sup>42</sup> See *U S WEST Order*, 15 FCC Rcd at 13195-13195, para. 12; *CALLS Order*, 15 FCC Rcd at 12985, para. 61. See also *Citizens Order*, 15 FCC Rcd at 23437, paras. 7-8.

not address the numerous reasons supporting the CALLS election deadline. In 2000, at the time of the **CALLS Order**, Iowa Telecom did not express any concerns about the timing of the CALLS election. Further, it advances no new public policy concerns and cites no unforeseeable circumstances that developed after the expiration of the election deadline to justify our reconsideration of the Commission's decisions in the **ZIS WEST Order** and the **Citizens Order**. A firm deadline promotes an orderly administration of the Commission's policies and ensures that parties are treated fairly and equally." It also permits the Commission, at a specific time, to resolve issues once and for all without the specter of indefinite uncertainty. Allowing extensions of deadlines well after a deadline has passed creates uncertainty and is not consistent with sound administrative policy. Accordingly, if Iowa Telecom needed more time to make its election, it should have requested it before the deadline passed, as U S WEST and Citizens did. For these reasons, we conclude that allowing Iowa Telecom to turn back the clock, by forbearing from the CALLS election rule, is not in the public interest, and therefore does not satisfy the statutory forbearance standard.<sup>44</sup>

**B. Forbearance from the ATS Rate Set in the **CALLS Order**.**

14. Iowa Telecom requests in the alternative that the Commission forbear from the \$0.0095 per minute ATS rate set for low-density price cap LECs in the **CALLS plan**.<sup>45</sup> Iowa Telecom argues that permitting it to reset its ATS rate based on FLEC will alleviate its concerns about the CALLS plan. As discussed below, we find that Iowa Telecom's alternative request satisfies the standards for forbearance under section 10 of the 1996 Act.

15. It is first necessary, however, to discuss the specific rationale for the 0.95 cents per minute target rate and Iowa Telecom's election. The CALLS plan recognized that multiple ATS target rates for interstate average traffic sensitive charges were necessary to address the differences among the price cap LECs. Accordingly, the CALLS plan initially proposed a target rate of 0.55 cents per minute for the BOCs and CTE, and a target rate of 0.65 cents per minute for other price cap LECs.<sup>46</sup> Upon request from Valor Telecommunications, a rural LEC that served low-density areas, a third target rate of 0.95 cents per minute was added to the CALLS plan shortly before the adoption of the **CALLS Order**.<sup>47</sup>

16. Iowa Telecom filed an *ex parte* letter with the Commission four days before the **CALLS Order** was adopted. In this letter, Iowa Telecom stated that it had attempted to discuss further changes to the CALLS plan with the CALLS coalition members to address its concerns, but that the coalition members had indicated that there was insufficient time to work out the details, given the Commission's imminent decision on the **CALLS plan**.<sup>48</sup> Iowa Telecom further stated that, given the size and rural nature of the exchanges it would acquire and the financial demands on the company, the CALLS plan, without modifications to accommodate Iowa Telecom, would threaten the financial viability of the company. Iowa Telecom also stated that the "financing in place for Iowa Telecom's acquisition was very carefully structured" based on the Commission's previous price cap rules.<sup>49</sup> Iowa Telecom, which, like Valor

<sup>43</sup> See, e.g., *First Auction of Interactive Video and Data Service (IVDS) Licenses. Request for Waiver of Application Deadline*, Memorandum Opinion and Order, 11 FCC Rcd 1134 (1996).

<sup>44</sup> See 47 U.S.C. § 160(a)(3).

<sup>45</sup> See Petition at iii and 2.

<sup>46</sup> See **CALLS Order**, 15 FCC Rcd at 13021, para. 142.

<sup>47</sup> See **CALLS Order**, 15 FCC Rcd at 13021-22, para. 142.

<sup>48</sup> See Letter from James U. Troup, Brian D. Robinson, Attorneys for Iowa Telecommunications Services Inc., Aner & Hadden LLP, to Magalie Roman Salas, Secretary, FCC, CC Docket Nos. 94-1, 96-45, 99-249, and 96-262, filed May 26, 2000 (Iowa Telecom May 26, 2000 *Ex Parte* Letter).

<sup>49</sup> See Iowa Telecom May 26, 2000 *Ex Parte* Letter at 2.

Telecommunications, is a low-density LEC, was a newly-formed company at the time the CALLS negotiations were finalized, and it believed that it would be given an option to operate under the previous price cap regulations.<sup>50</sup>

17. We find that forbearance serves the public interest and is warranted for this particular carrier under the unique circumstances presented. In particular, Iowa Telecom was a newly-formed company at the time the CALLS negotiations were finalized and had little opportunity to be an active participant in the negotiations. Because of its newly-formed status and the timing of its acquisition of exchanges, Iowa Telecom also had less opportunity to assess whether its ATS target rate adequately reflected its cost of providing services than did other price cap incumbent LECs. Although, as discussed above, we continue to adhere to our policy that the CALLS election deadline should not be revisited, we do believe that the more limited relief of forbearing from the 0.95 cent per minute rate is appropriate.

18. Granting Iowa Telecom's alternative request fulfills the first prong of the forbearance test. In the **Access Charge Reform Order**, the Commission stated that its goal was for interstate access charges to reflect the forward-looking economic costs of providing interstate access services.<sup>51</sup> The Commission recognized that "the rates for interstate access services will generally move toward the forward-looking economic cost of providing such services in response to increased competition in local exchange and exchange access markets," ensuring that goods and services are provided to consumers in the most efficient manner possible.<sup>52</sup> Accordingly, setting Iowa Telecom's ATS rate at forward-looking levels will not impede our efforts to move the market place closer to economically rational competition. Setting rates at the forward-looking economic cost of providing services also satisfies the first prong of the statutory forbearance requirement that rates remain just and reasonable, and are not unjustly or unreasonably discriminatory.<sup>53</sup>

19. Further, we find that the remaining two prongs of the statutory forbearance test are satisfied, because strict enforcement of the 0.95 cent per minute ATS rate is not necessary to protect consumers, and forbearance is consistent with the public interest. The Commission stated in the **CALLS Order** that the CALLS plan provides a number of consumer benefits, and it also promotes the development of greater facilities-based competition.<sup>54</sup> Nothing in the record supports a finding that allowing Iowa Telecom to reset its ATS rate based on FLEC would adversely affect the CALLS plan's consumer benefits or its promotion of competitive market conditions. We agree with Iowa Telecom that any increase in its access charges would have a *de minimis* impact on the interstate interexchange rates charged to individual consumers, because section 254(g) requires IXCs to average interstate interexchange rates nationwide.<sup>55</sup> Forbearance from the 0.95 cent per minute ATS rate is therefore appropriate because that rate is not necessary in this limited instance to protect consumers.<sup>56</sup> We also believe that the limited relief we grant will not impede the promotion of competitive market conditions in Iowa. We note that CLECs competing

<sup>50</sup> See Petition at 4-5. Iowa Telecom states that, despite the rural nature of its service area, in the spring of 2000, it elected to be regulated as a price cap carrier like its predecessor **GTE**, rather than as a rate-of-return carrier, because it believed price cap regulation allowed it to retain some measure of flexibility and provided the company with an incentive to operate efficiently. See Petition at 4.

<sup>51</sup> **Access Charge Reform**, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 16092-99, paras. 258-74 (1997) (**Access Charge Reform Order**).

<sup>52</sup> See **Access Charge Reform Order**, 12 FCC Rcd at 16094-96, paras. 263 and 265.

<sup>53</sup> See 47 U.S.C. § 160(a)(1). See also, e.g., *Texas Office of Public Utility Counsel v. FCC*; *Verizon Communications Inc. v. FCC*, 122 S. Ct. 1646 (2002).

<sup>54</sup> **CALLS Order**, 15 FCC Rcd at 12979, para. 42.

<sup>55</sup> See Petition at 35-36; 47 U.S.C. § 254(g).

<sup>56</sup> See 47 U.S.C. § 160(a)(2).

with Iowa Telecom currently may charge higher interstate access rates than Iowa Telecom, but CLECs are in fact reducing their rates over a three-year transition period, at which time their rates will equal those of Iowa Telecom.<sup>57</sup> Because CLECs will charge the same level of ATS rates that Iowa Telecom is permitted to charge at the end of the transition period, and, because rates based on FLEC are designed to mirror rates that a competitive market should produce,<sup>58</sup> permitting Iowa Telecom to set its ATS rate at forward-looking levels should have no significant adverse competitive impact.<sup>59</sup> For all of the foregoing reasons, we conclude that the requested alternative relief is consistent with the public interest.

20. AT&T, WorldCom, and Sprint object to any increase in Iowa Telecom's ATS target rate above 0.95 cent per minute. Their arguments that are responsive to Iowa Telecom's alternative request for relief, however, are based on their belief that Iowa Telecom's calculation of forward-looking ATS rates is flawed.<sup>60</sup> No party argues that an ATS rate based on forward-looking cost would be unreasonable or unjust, or that it would be unreasonably or unjustly discriminatory. Nor do they argue that forbearance from the 0.95 cent per minute ATS target rate would be inconsistent with the public interest or that enforcement is necessary to protect consumers.

21. WorldCom argues that, if a FLEC study results in ATS rates higher than 0.95 cent per minute, such an "increase in ATS rates would affect the balance that contributed to the Commission's finding that the CALLS plan was within the zone of reasonableness."<sup>61</sup> We disagree. In the **CALLS Order**, the Commission evaluated the CALLS plan and found that the plan taken as a whole, as well as each constituent part, falls within the range of reasonableness.<sup>62</sup> The Commission stated that there is no one "right answer" to the many disputes that the CALLS plan resolves, but that there are instead "ranges of reasonable solutions, and the ultimate question is whether the CALLS plan is a sensible transitional plan for accommodating the Act's universal service goals with the development of fuller, more rational competition."<sup>63</sup> As stated in the **CALLS Order**, the Commission has the legal authority to make changes to the CALLS plan.<sup>64</sup> There is no reason to think that allowing Iowa Telecom to reset its ATS rate based

<sup>57</sup> See 47 C.F.R. § 61.26(c). CLECs competing against Iowa Telecom currently can charge access rates no greater than 1.8 cents per minute, and they will reach Iowa Telecom's rate level no later than June 20, 2004. See **Access Charge Reform**, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001).

<sup>58</sup> See **Access Charge Reform Order**, 12 FCC Rcd at 16094-96, paras. 263 and 265.

<sup>59</sup> See 47 U.S.C. § 160(b) (requiring the Commission to consider competitive effect of requested forbearance).

<sup>60</sup> See Sprint Comments; **AT&T Opposition**; WorldCom Opposition; Letter from Patrick H. Merrick, Esq., Director, AT&T Federal Government Affairs, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-331, filed Nov. 22, 2002. As part of its Petition, Iowa Telecom submits a forward-looking cost study based on the Commission's Synthesis Model. The Synthesis Model is a forward-looking cost model adopted by the Commission for the purpose of apportioning universal service support. See, e.g., **Federal-State Joint Board on Universal Service**, CC Docket Nos. 96-45, 97-160, Fifth Report and Order, 13 FCC Rcd 21323 (1998); **Federal-State Joint Board on Universal Service**, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, 14 FCC Rcd 20156 (**USF Tenth Report and Order**) (1999). It is also used to compare relative cost differences between states in the context of section 271 applications. See, e.g., **Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region InterLATA Services in Pennsylvania**, CC Docket 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001). Iowa Telecom's proposal to use the Synthesis Model to set rates would expand its use beyond what the Commission has done to date. Indeed, the Commission has cautioned against using the Synthesis Model to set rates. See, e.g., **USF Tenth Report and Order**, 14 FCC Rcd at 20172, para. 32.

<sup>61</sup> WorldCom Opposition at 5.

<sup>62</sup> See **CALLS Order**, 15 FCC Rcd at 12981, paras. 48-49.

<sup>63</sup> See **CALLS Order**, 15 FCC Rcd at 12982, para. 49.

<sup>64</sup> See **CALLS Order**, 15 FCC Rcd at 12982, para. 49.



on FLEC would cause that rate or the rates reflected in the CALLS plan to fall outside the range of reasonableness.<sup>65</sup> Nor would such ATS rate or other rates set through the CALLS plan be unjustly or unreasonably discriminatory. In addition, resetting Iowa Telecom's ATS rate would not prevent the CALLS plan from being a sensible transitional plan for accommodating the Act's universal service goals with the development of economically rational competition.

22. We conclude that this relief is more appropriate than the relief sought in Iowa Telecom's request that we forbear from the CALLS election rule. If we were to grant forbearance from the CALLS election rule, consistent with the *CALLS Order*, we would have to set all of Iowa Telecom's rates at forward-looking cost and determine an appropriate X-factor for Iowa Telecom.<sup>66</sup> The Commission also would have to evaluate whether the size and distribution of the interstate access universal service support would need to be modified in light of our determination of Iowa Telecom's costs.<sup>67</sup> Other parties would not know to what extent Iowa Telecom's new common line rates would cause changes to universal service and how these changes might affect them. Given that Iowa Telecom indicates that granting its alternative request will fully address its concerns, we find that it serves the public interest to conduct the less burdensome proceeding.<sup>68</sup> Resetting only Iowa Telecom's ATS rates will not change the size and distribution of universal service support, thus alleviating concerns about the uncertainty that any such change might produce for other carriers. Moreover, the Commission and interested parties will have to devote significantly fewer resources to resetting ATS rates than would be required if we granted forbearance from the CALLS election rule and, consequently, had to reset all of Iowa Telecom's rates at FLEC and calculate an X-factor. For the reasons discussed above, we conclude that granting the limited alternative relief requested by Iowa Telecom meets the three prongs required to allow forbearance under section 10 of the 1996 Act.

23. Accordingly, we will forbear from application of the 0.95 cent per minute ATS target rate and allow Iowa Telecom to reset its ATS target rate at forward-looking cost levels. Upon filing of a tariff, supported by a forward-looking cost study, we will undertake a tariff investigation to determine Iowa Telecom's forward-looking ATS target rate for the remainder of the CALLS plan's five-year term. We note that Iowa Telecom's decision to set its ATS rate based on forward-looking costs is binding regardless of the outcome of the tariff investigation. The Commission also adopted this approach in the *CALLS Order* to ensure that the Commission does not waste its limited resources in cost proceedings performed solely for the purpose of allowing LECs to determine which option is most advantageous to them.<sup>69</sup>

#### IV. CONCLUSION

24. Based on the foregoing discussion, we find that forbearance from application of the rule imposing a deadline for choosing between rates adopted in the *CALLS Order* and rates based on FLEC, thus relieving Iowa Telecom of its 2000 decision to elect the CALLS plan, is inconsistent with the public interest. We also find, however, that Iowa Telecom's request to forbear from the \$0.0095 per minute ATS rate set in the *CALLS Order* meets the standards set forth in section 160(a) of the Act for the grant of forbearance. Accordingly, we grant Iowa Telecom's alternative request.

<sup>65</sup> We note that this is particularly true because Iowa Telecom's new ATS rate based on forward-looking cost is subject to Commission's investigation under section 204 of the Act to ensure that its rates are just and reasonable. See 47 U.S.C. § 204.

<sup>66</sup> *CALLS Order*, 15 FCC Rcd at 12984-85, paras. 57-60.

<sup>67</sup> *CALLS Order*, 15 FCC Rcd at 12985, para. 62.

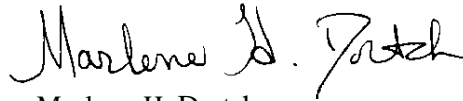
<sup>68</sup> See Petition at 21.

<sup>69</sup> See *CALLS Order*, 15 FCC Rcd at 12985, para. 61.

**V. ORDERING CLAUSE**

25. Accordingly. IT **IS ORDERED** that, pursuant to section 160 of the Communications Act of 1934, **as** amended, 47 U.S.C. § 160, **Iowa** Telecommunications Services' Petition for Forbearance is **DENIED IN PART** and **GRANTED IN PART**, **as** set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Marlene H. Dortch". The signature is fluid and cursive, with the first name "Marlene" being the most prominent.

Marlene H. Dortch  
Secretary

**STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN**

*Re: Petition for Forbearance of Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom  
Pursuant to 47 U.S.C. Section 160(c) from the Deadline for Price Cap Carriers to Elect  
Interstate Access Rates Based on the CALLS Order or a Forward Looking Cost Study CCB  
Docket No. 01-331*

I disagree with the portion of today's decision that denies Iowa Telecom's request that the Commission forbear from applying the rule imposing a deadline for choosing between rates adopted in the CALLS Order and rates based on forward-looking economic cost.

Iowa Telecom presents unique circumstances that justify forbearance. Iowa Telecom makes clear that it did not have a meaningful opportunity to make an informed choice at the only time this election was permitted because it began operations shortly before the election date, and it did **not** have a reasonable opportunity to acquire the data necessary to make an informed decision within the timeframe allowed.

I am sympathetic to the request made by the nation's smallest price cap carrier that serves rural Iowa. I have serious reservations regarding the majority's decision to strictly apply the requirements of the CALLS order in this case, especially since that decision making process essentially required all price cap carriers to abide by the negotiated results of a "compromise" created by a select number of large incumbent local exchange and interexchange carriers and Iowa Telecom did not participate in those negotiations.<sup>70</sup>

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<sup>70</sup> Before commencing operations and prior to the adoption of the CALLS order, Iowa Telecom elected to be a price cap carrier like its predecessor GTE. Iowa Telecom made its election relying on the fact that the CALLS order, as originally proposed, was offered as a purely voluntary, opt-in plan. Moreover, it appears that Iowa Telecom structured the financing for the acquisition of GTE's Iowa's exchanges based on the FCC's then existing price cap rules.